

**13-34-107 Advertising, recruiting, or operating a proprietary school -- Required registration statement or exemption -- Certificate of registration -- Registration does not constitute endorsement.**

- (1)
  - (a) Unless an institution complies with Subsection (1)(b), the institution may not do any of the following in this state:
    - (i) advertise a proprietary school;
    - (ii) recruit students for a proprietary school; or
    - (iii) operate a proprietary school.
  - (b) An institution may not engage in an activity described in Subsection (1)(a) unless the institution:
    - (i)
      - (A) files with the division a registration statement relating to the proprietary school that is in compliance with:
        - (I) applicable rules made by the division; and
        - (II) the requirements set forth in this chapter; and
      - (B) obtains a certificate of registration; or
    - (ii) establishes an exemption with the division.
  - (c)
    - (i) Except as provided in Subsection (1)(c)(ii), an institution that files a registration statement under this section shall file a separate registration statement and pay a separate fee for each physical campus that the institution operates as a proprietary school.
    - (ii) An institution that registered with the division before May 10, 2011 is not required to comply with Subsection (1)(c)(i) until the institution's next regular renewal date.
- (2)
  - (a) The registration statement or exemption described in Subsection (1) shall be:
    - (i) verified by the oath or affirmation of the owner or a responsible officer of the proprietary school filing the registration statement or exemption; and
    - (ii) include a certification as to whether any of the following has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding:
      - (A) the proprietary school; or
      - (B) any of the following with respect to the proprietary school:
        - (I) an owner;
        - (II) an officer;
        - (III) a director;
        - (IV) an administrator;
        - (V) a faculty member;
        - (VI) a staff member; or
        - (VII) an agent.
  - (b) The proprietary school shall:
    - (i) make available, upon request, a copy of the registration statement, showing the date upon which it was filed; and
    - (ii) display the certificate of registration obtained from the division in a conspicuous place on the proprietary school's premises.
- (3)
  - (a) A registration statement and the accompanying certificate of registration are not transferable.

- (b) In the event of a change in ownership or in the governing body of the proprietary school, the new owner or governing body, within 30 days after the change, shall file a new registration statement.
- (4)
  - (a) Except as provided in Subsection (3)(b), a registration statement or a renewal statement and the accompanying certificate of registration are effective for a period of two years after the date of filing and issuance.
  - (b) No later than one year after the issuance or renewal of a certificate of registration to a proprietary school, the proprietary school shall:
    - (i) submit a review of the proprietary school's continued qualification for a certificate of registration, on a form approved by the division; and
    - (ii) pay a fee established under this section and Section 63J-1-504.
- (5)
  - (a) The division shall establish a graduated fee structure for the filing of registration statements by various classifications of institutions pursuant to Section 63J-1-504.
  - (b) Fees are not refundable.
  - (c) Fees shall be deposited in the Commerce Service Account created by Section 13-1-2.
- (6)
  - (a) Each proprietary school shall:
    - (i) demonstrate fiscal responsibility at the time the proprietary school files its registration statement as prescribed by rules of the division; and
    - (ii) as provided in Subsection (6)(b), provide evidence to the division that the proprietary school:
      - (A) is financially sound; and
      - (B) can reasonably fulfill commitments to and obligations the proprietary school has incurred with students and creditors.
  - (b) The evidence that a propriety school is required to provide under Subsection (6)(a)(ii) includes:
    - (i) for a proprietary school that has not operated long enough to complete a fiscal year:
      - (A) pro forma financial statements until the information described in Subsection (6)(b)(ii) is available; and
      - (B) a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school; and
    - (ii) for a proprietary school that has completed a fiscal year or as soon as a proprietary school completes its first fiscal year:
      - (A) a current financial statement, with all applicable footnotes, for the most recent fiscal year, including a balance sheet, a statement of income, a statement of retained earnings, and a statement of cash flow; and
      - (B) a certified fiscal audit of the proprietary school's financial statement, performed by a certified or licensed public accountant, or a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school.
  - (c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6), the division may consider:
    - (i) any judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to creditors;
    - (ii) documentation showing the resolution of any matter listed in Subsection (6)(c)(i);
    - (iii) the proprietary school's explanation for any of the matters listed in Subsection (6)(c)(i);
    - (iv) any guarantee agreement provided for the proprietary school; and

- (v) any history of a prior entity that:
    - (A) is owned or operated by any individual with an ownership interest in the proprietary school; and
    - (B) has failed to maintain fiscal responsibility.
  - (d) The division may require evidence of financial status at other times when it is in the best interest of students to require such information.
- (7)
- (a) A proprietary school applying for an initial certificate of registration or seeking renewal shall provide in a form approved by the division:
    - (i) a surety bond;
    - (ii) a certificate of deposit; or
    - (iii) an irrevocable letter of credit.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing for:
    - (i) the amount of the bond, certificate, or letter of credit required under Subsection (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary school during a school year;
    - (ii) the execution of the bond, certificate, or letter of credit;
    - (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the registration term; and
    - (iv) any other matters related to providing the bond, certificate, or letter of credit required under Subsection (7)(a).
  - (c) The bond, certificate, or letter of credit shall be used as a protection against loss of advanced tuition, book fees, supply fees, or equipment fees:
    - (i) collected by the proprietary school from a student or a student's parent, guardian, or sponsor prior to the completion of the program or courses for which it was collected; or
    - (ii) for which the student is liable.
- (8)
- (a) Except as provided in Section 13-34-113, the division may not refuse acceptance of a registration statement that is:
    - (i) tendered for filing and, based on a preliminary review, appears to be in compliance with Subsections (1), (2), and (6); and
    - (ii) accompanied by:
      - (A) the required fee; and
      - (B) one of the following required by Subsection (7):
        - (I) surety bond;
        - (II) certificate of deposit; or
        - (III) irrevocable letter of credit.
  - (b) A certificate of registration is effective upon the date of issuance.
  - (c) The responsibility of compliance is upon the proprietary school and not upon the division.
  - (d)
    - (i) If it appears to the division that a registration statement on file may not be in compliance with this chapter, the division may advise the proprietary school as to the apparent deficiencies.
    - (ii) After a proprietary school has been notified of a deficiency under Subsection (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school, accompanied by:
      - (A) the required fee; and
      - (B) one of the following required by Subsection (7):

- (I) surety bond;
  - (II) certificate of deposit; or
  - (III) irrevocable letter of credit.
- (9) The following does not constitute and may not be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state:
  - (a) an acceptance of:
    - (i) a registration statement;
    - (ii) a renewal statement; or
    - (iii) an amended registration statement; and
  - (b) issuance of a certificate of registration.

Amended by Chapter 221, 2011 General Session